

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.488 OF 2005

Shri Radhakrishna Ramnath Chandak & Ors... Appellants
Versus
Smt.Mirabai Madansa Kshatriya & Ors. ... Respondents
Mr.M.M.Sathaye for appellants
Mr.S.M.Gorwadkar for respondent no.1.

CORAM : P.V.KAKADE, J.

DATE : 25TH OCTOBER, 2005

P.C.:

1. The appellants have preferred this appeal against the judgement and order passed by 4th Ad-hoc Addl.District Judge, Nasik dismissing the appeal and confirming the judgment and order passed by Civil Judge Junior Division, Nasik dated 31.1.2001 decreeing the suit with direction to defendant to remove encroachment from the plaintiffs' property C.T.S. No.636B situated at Vakilwadi, Nasik and for consequential reliefs.

2. I have heard the learned counsel for both the parties for some time and it was found that the suit was filed by the plaintiff for removal of encroachment and

possession of the suit property, which was decreed in favour of the plaintiff. In the course of argument it was revealed that the property of the plaintiff was not included in the course of survey taken for the purpose of determination of the encroachment. In view of this position by order dated 6th June, 2005 this court thought it fit to keep the appeal pending and gave direction to obtain measurements of both the properties through City Survey Officer and refer the matter back to this Court in order to determine it in proper perspective. Accordingly, the matter was remanded for that purpose in the trial court and the City Survey is accordingly made and the report and the map is on record. However, taking into account the factual matrix involved herein it is found that the real issue involved cannot be effectively adjudicated in the Second Appeal at this stage, but it would be just and proper to refer back the matter to the District Court to adjudicate it on the basis of newly available record of Survey made by the Surveyor consequent upon the directions issued by this court.

. It is also to be noted that originally the encroachment was alleged to be said that of 28 sq. mtr.

however, the survey made pending this appeal reduced the area of alleged encroachment to the extent of 14.60 sq. mtrs. In view of this position, in order to effective adjudication of the judgment with possible involvement of the Municipal Authority, it would be better for the District Court to adjudicate it on the basis of available record instead of this Court at the stage of admission in Second Appeal.

3. Hence, the order passed by the lower appellate court dated 7.2.2005 is set aside and the matter is remanded back to the District Court, Nasik with direction to adjudicate the appeal on merits in the light of newly available record and all the relevant issues involved by giving liberty to both sides to put up their respective cases. The District Court shall hear and dispose of the matter within a period of three months from the date of receipt of Writ of this Court. With this direction the appeal stands disposed of with no order as to costs.